

THERESA JIBILIAN

IBLA 81-822

Decided September 8, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease application for failure to file timely first-year advance rental payment. M 49014.

Affirmed.

1. Evidence: Presumptions -- Oil and Gas Leases: Rentals

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where an official BLM record does not reflect any payment for advance first-year annual rental for an oil and gas lease but does contain a dated statement by BLM's receiving clerk indicating that no money was received when the lease applicant filed her offer with BLM, it is presumed that no payment was made, in the absence of a clear showing to the contrary by the applicant.

2. Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Rentals

Where, following adjudication of her simultaneous noncompetitive oil and gas lease application, an applicant fails to submit advance first-year rental along with paperwork for the lease agreement within 30 days from her receipt of notice to do so, as required by 43 CFR 3112.4-1(a), her application is properly rejected under 43 CFR 3112.6-1(d).

APPEARANCES: Theresa Jibilian, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

The simultaneous noncompetitive oil and gas lease application of Theresa Jibilian was drawn with first priority in the September 1980 drawing for parcel MT-6 in the Montana State Office, Bureau of Land Management (BLM). Appellant's application was approved on adjudication, and BLM forwarded the lease agreement, M 49014, consisting of a lease form and stipulations, to appellant on April 8, 1981, for her to execute. A notice of additional requirements accompanied the lease agreement and expressly advised her that she must pay the first year's rental within 30 days of receipt of the notice, which appellant received on April 17, 1981. She filed executed copies of the lease forms and stipulations with BLM on April 27, 1981. However, under date stamp of April 27, 1981, BLM's receiving clerk noted as follows on the accompanying cover memorandum:

"No money received."

On May 27, 1981, BLM issued a decision rejecting appellant's application because she did not submit advance annual rental for the first year within 30 days as required by 43 CFR 3112.4-1(a).

On June 15, 1981, appellant filed a check (No. 499) in the amount of \$1,509, the amount due for the first-year's rental. Appellant backdated the alleged replacement check to April 20, 1981. BLM evidently processed this check, as shown by a "Receipt and Accounting Advice" for this amount dated June 15 in the record. On June 15, appellant also filed a copy of the check (No. 486) which she said had been included in the material filed with BLM on April 27. On June 26, 1981, BLM advised appellant that it could not consider revoking its decision of May 27, 1981. Appellant filed a timely notice of appeal of BLM's decision of May 27.

[1] The only question to resolve on appeal is whether appellant submitted a check for the first-year rental along with the other material filed with BLM on April 27, 1981, in connection with her lease offer. She asserts that she submitted a check for the rental. Unfortunately, BLM's records do not contain the check, but they do contain a dated statement from BLM's receiving clerk that no money was received with her submission.

The absence of this check in BLM's files raises the presumption that appellant did not submit it, since there is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. John Walter Starks, 55 IBLA 266 (1981); Larson v. Utah, 50 IBLA 382 (1980); Phillips Petroleum Co., 38 IBLA 344 (1978); Donald E. Jordan, 35 IBLA 290 (1978). Accordingly, in the absence of a clear showing to the contrary, we must presume that, if appellant had filed the required payment with BLM, its officers would properly have noted it in the record, and that the

absence of this payment demonstrates that appellant did not file it. See John Walter Starks, supra at 270; Larson v. Utah, supra at 391; Phillips Petroleum Co., supra at 345.

The presence of the receiving clerk's express notation that the material which appellant filed on April 27, 1981, did not include payment also raises a strong presumption that it was not filed. Appellant has not shown anything suggesting that this entry is incorrect. In the absence of any evidence impeaching the accuracy of the clerk's statement, we must hold that no payment was received.

[2] The requirement is clear that an applicant must file advance rental payment for the first year with BLM within 30 days of receipt of notice to do so. 43 CFR 3112.4-1(a). Appellant failed to do so, and BLM properly rejected her offer. 43 CFR 3112.6-1(d).

BLM should immediately refund the backdated untimely payment which appellant filed on June 15, 1981.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette  
Chief Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

